and ought to act under the provisions of section 166 of the Criminal Procedure Code. Clearly evidence established beyond any reasonable doubt that the appellant had committed the offence of armed robbery and on the authority of the Privy Council case of *Begu* v. *King Emperor* [5] which the Singapore Court of Criminal Appeal held to be binding on it in the case of *Quinn and Howland* v. *Rex* [6] we convict the appellant of the offence of armed robbery.

We quash the conviction of the offence of murder and set aside the sentence of hanging but we convict the appellant of the offence of armed robbery.

Order accordingly.

Solicitors: *Chor Pee & Hin Hiong.*

PEOPLE'S INSURANCE CO. LTD. v. KHOO TIANG SENG

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) February 10, 1966]

[Singapore — Federal Court Civil Appeal No. 118 of 1964]

Motor Vehicles (Third Party Risks and Compensation) Ordinance, 1960, s. 8(1) — Liability of insurers — Judgment against driver of motor vehicle — Whether driver was driving motor vehicle on order or with the permission of the insured.

Insurance — Third-party risks — Liabiltiy of insurers.

This was an appeal against the judgment of Choor Singh J. reported at [1965] 2 M.L.J. 16. The appellants claimed that the driver at the time of the accident was not driving the car with the owner's permission. The learned judge held that on the facts the inference was that the driver had the implied consent of the owner to go to lunch on his way to return the car to the owner.

Held: on the facts and in the circumstances of this case where the insured in parting with the control of the car without any definite prohibition as to the nature of its use to a person, who thereupon uses it for a purpose for which he had used it on previous occasions with the insured's knowledge and without the insured's expressed disapproval, it must be held that the insured had given permission to that person to use the car for the purpose for which it had been used on previous occasions.

[Editorial note: The Honourable the Lord President who presided at the hearing of the appeal did not partake at the Federal Court when delivering the reserved judgment in Singapore.

FEDERAL COURT.

Dennis Lee for the appellants.

Robert Yap Tyou Min for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (Singapore): The respondent who was injured in a road accident due to the negligent driving by one Chua Ou Chye of a motor car SP. 5034 and had obtained an unsatisfied judgment against him for damages sued the appellants, the insurers of the motor car, by virtue of section 8(1) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance, 1960.

The appellants had issued a policy covering third party risks in respect of the car in the name of Yew Seng & Co., of which a Mr. Ah Bah was the proprietor, as the insured. The policy contained a clause of a common type whereby the insurers undertook to indemnify any "authorised driver" driving the motor vehicle and the policy defined "authorised driver" to include any licensed driver "who is driving on the policy holder's order or with his permission".

The appellants resisted the action on the ground that Chua at the time of the accident was not driving the car with Ah Bah's permission.

The facts were that Chua, a motor mechanic, was asked by Ah Bah on the day of the accident to do some repairs to Ah Bah's car. Chua had on previous occasions done repair work to the car for Ah Bah and on two such previous occasions he had used the car entrusted to him for repairs to go for lunch. On neither of these occasions had he obtained Ah Bah's prior permission but had subsequently informed Ah Bah who raised no objections to such use.

Chua collected the car, drove it to his workshop, did the repairs, took it for a test run and returned with it to his workshop intending to return it to Ah Bah later on.

Accordingly towards the lunch hour with two friends in it he drove the car with a view to returning it to Ah Bah but on the way he and his friends decided to have lunch before returning the car. They deviated from the normal direct route to Ah Bah's premises and it was then that the accident occurred.

The trial judge on this evidence said that "the inference seemed irresistible" that there was implied permission on the part of Ah Bah for Chua to use the car to go to lunch on the day of the accident and held that Chua was driving the car at the time of the accident with the policy holder's permission within the meaning of the policy and gave judgment in favour of the respondent.

The appellants now appeal against this judgment contending that as the respondent had to prove that at the time of the accident, after Chua had deviated from the normal route from the garage to the insured's premises for his own private purpose, Chua had the insured's permission to drive the car, the trial judge had erred on the facts in coming to the conclusion that Chua was then driving the car with the insured's permission.

It is settled law that an appellate court is not precluded from coming to a different conclusion from a trial judge on any matter of fact more particularly where the finding is based on

evaluation of facts and not on their perception. The question before us on this appeal is whether on the evidence, the trial judge's finding that Chua had Ah Bah's permission at the time of the accident was wrong.

The trial judge had accepted Chua's evidence as true. His evidence was not contradicted by other evidence nor was it materially shaken in cross-examination. As stated earlier the evidence is that Chua had on two previous occasions similarly deviated from the normal route from his workshop to Ah Bah's premises without Ah Bah expressing disapproval of such user of the car. Ah Bah had not on the day in question expressly prohibited Chua from using the car, the control of which he parted to Chua, for Chua's private purposes.

It seems to me on these facts the trial judge was correct in the view he took that Chua at the time of the accident was driving the car with the permission of Ah Bah.

On the facts and circumstances of this particular case, where the insured in parting with the control of the car without any definite prohibition as to the nature of its use to a person, who thereupon uses it for a purpose for which he had used it on previous occasions with the insured's knowledge and without the insured's expressed disapproval, it seems to me that the insured must be held to have given permission to that person to use the car for the purpose for which it had been used on previous occasions.

I would dismiss the appeal with costs.

Tan Ah Tah F.J.: I agree.

Appeal dismissed.

Solicitors: *Lee & Lee; Battenberg & Talma.*

ONG LOCK MUI v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Ong Hock Thye F.J.) February 14, 1966]

[J.B. — Federal Court Criminal Reference No. X 1 of 1965]

Income Tax — Notice to furnish information — Whether necessary to specify purpose — Income Tax Ordinance, 1947, ss. 60, 61B(2) and 90.

Income Tax — Assessment of income — Taxpayer's liability to tax.

The taxpayer was charged for failure to comply with a notice under section 61B(2) of the Income Tax Ordinance issued by the comptroller requiring information to be furnished to the comptroller. The learned magistrate acquitted the accused as he held that the notice was bad as it did not specify the purpose for which the information was required. On appeal by the Inland Revenue Department, Suffian J. held that where the comptroller acted under section 61B(2) of the Ordinance, it was unnecessary for him to specify the purposes for which the information was required, provided it was clear, as it was in this case, that the information required was required for the purposes of the Ordinance. The learned judge was of the opinion, however, that his view involved a point of law of some importance and reserved accordingly that point for the consideration of the Federal Court.

Held: the notice as was framed was a good notice under section 61B(2) and there was before the magistrate a *prima facie* case that such a notice had been served on the taxpayer and that it had not been complied with.

Observations on taxpayer's potential liability to tax.

FEDERAL COURT.

Appellant (respondent in the court below) in person.

Au Ah Wah (Senior Federal Counsel) for the respondent (appellant in the court below).

In the court below the following grounds of judgment were given:

Suffian J.: I allowed this appeal and now give my reasons.

The respondent was charged as follows:

"That you, Ong Lock Mui of 79, First Floor, Jalan Ibrahim, Johore Bahru, an advocate and solicitor of Messrs L. M. Ong, being required by a notice in writing under section 61B(2) dated 8th October, 1964, by the Pengawal Chukai Pendapatan, States of Malaya, to furnish him within the stated period of thirty days from 8th October, 1964, with the particulars asked for in the said notice in respect of his business income failed without reasonable excuse to furnish such particulars within the stated period of thirty days as required thereby committing an offence under section 90(1) and punishable under section 90(2) of the Income Tax Ordinance No. 48 of 1947 (as amended)."

The prosecution proved service on 8th October, 1964, on the respondent of a notice exhibit P1 in the following terms:

"NOTICE UNDER SECTION 61B(2) OF THE INCOME TAX ORDINANCE, No. 48 OF 1947

NOTICE is hereby given under section 61B(2) of the Income Tax Ordinance, No. 48 of 1947, to furnish within thirty (30) days from the date of service of this notice, the following particulars:—

Forward a signed statement of all your assets and liabilities (both business and private) including those of your wife and children as at 31st December, 1963. The statement should include, *inter alia*, cash in bank and in hand, houses, cars, vacant lands, jewellery radiograms, television set, loans, advances, Post Office Savings Bank balance, other savings accounts, fixed deposit, balances of current account (if any), etc. The value of all assets should be shown at cost price.

Failure to comply with this notice constitutes an offence under the said Ordinance for which penalties are provided under section 90.

TAKE NOTICE that unless the above particulars are furnished and received by me within the period stated above, you may be prosecuted without further warning, and on conviction will be liable to a fine not exceeding $1,000 and in default of payment to imprisonment for a term not exceeding six (6) months.

YOU ARE WARNED that failure to furnish all or part of the particulars stated above will render you liable to prosecution.

In order to ensure safe delivery to this office, you should either deliver the particulars personally to this